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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

ORIGINAL
FILE

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In the Matter of: : Docket Number

JUPITER, FLORDIA : 92-114

-----X

Date: August 25, 1992

Place: Washington, D.C.

Pages: 1 - 40

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Official Reporters

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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In the matter of: : Docket Number 92-114

JUPITER, FLORIDA :

- - - - - x

The above-entitled matter came on for
Conference, pursuant to Notice before Walter C. Miller,
Administrative Law Judge, at 2000 L Street N.W.,
Washington, D.C., in Courtroom Number 1, on Tuesday,
August 25, 1991, at 8:30 a.m.

APPEARANCES:

On behalf of Robert B. Taylor:

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On behalf of Jupiter Broadcasting Corporation:

JOSEPH A. BELISLE

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1 APPEARANCES (Continued):

2 On behalf of the Chief, Mass Media Bureau:

3 NORMAN GOLDSTEIN

4 Federal Communications Commission

5 2025 M Street N.W.

6 Washington, D.C. 20554 20036

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P R O C E E D I N G S

(Time Noted: 8:30 a.m.)

MR. JUDGE MILLER: Let's go on the record.

This is the date for the prehearing conference in the Jupiter, Florida renewal proceeding, MM Docket 92-114.

We're here today to exchange our Phase One direct case exhibits. In other words, firm Phase One up for hearing.

Before we get started, let's take some appearances. For Robert B. Taylor.

MR. CARR: Richard Carr.

MR. JUDGE MILLER: For Jupiter Broadcasting Corporation.

MR. BELISLE: Joseph Belisle.

MR. JUDGE MILLER: For the Chief, Mass Media Bureau.

MR. GOLDSTEIN: Norman Goldstein.

MR. JUDGE MILLER: All right. The prehearing order in this case was released back on May 27th, 1992, that's FCC 92M-612 and let's use that as our agenda and if there's anything that we don't cover that way that you think we should cover, feel free to bring it up either at the end of the conference or when you believe we have reached the appropriate paragraph.

1 Paragraph 2 of the prehearing order deals
2 with appearances and publication. My records show that
3 both of you have complied with that paragraph.

4 Do you have any problems with Paragraph 2,
5 Mr. Carr?

6 MR. CARR: No, your Honor.

7 MR. JUDGE MILLER: Mr. Belisle?

8 MR. BELISLE: Well, your Honor, if I just
9 might mention when I deposed Mr. Taylor, I was under
10 the impression that he hadn't broadcast any sort of
11 notice of the hearing over his station.

12 To the extent -- if that is required by the
13 Board, I think it is, but I'm not certain -- he may
14 have had to do a little bit in addition to what he's
15 done so far. I understand he did publish it in the
16 paper, but my recollection is that he did not broadcast
17 it over the station.

18 MR. JUDGE MILLER: Mr. Carr, is that
19 accurate?

20 MR. CARR: First of all, your Honor, I don't
21 recall whether the rule requires it, that the notice be
22 broadcast and --

23 MR. JUDGE MILLER: If you're a renewal
24 applicant, I think Mr. Belisle is right, you do.

25 MR. CARR: And I don't recall -- I don't

1 recall the testimony, your Honor, frankly.

2 MR. JUDGE MILLER: Although I read some
3 testimony among these documents where he said well, I
4 was off the air, how can I broadcast when I'm off the
5 air.

6 MR. CARR: But that might have been for one
7 of the prior notices, but -- at the time of hearing
8 designation.

9 MR. JUDGE MILLER: Well, I think you ought to
10 check with your client.

11 MR. CARR: Yes, I will.

12 MR. JUDGE MILLER: if he has not broadcast it
13 over the station, he better get it done.

14 MR. CARR: Yes, your Honor.

15 MR. JUDGE MILLER: It's a prerequisite for
16 going to hearing.

17 Do you have any comments on appearances or
18 publication, Mr. Goldstein?

19 MR. GOLDSTEIN: No, I have copies of both,
20 your Honor.

21 MR. JUDGE MILLER: Paragraphs 3 through 7
22 deal with clarification of issues. Paragraph --

23 MR. GOLDSTEIN: One thing though, your Honor.
24 In light of the fact that there is a second phase in
25 this hearing, it may help to state that there is two

1 phases to the hearing so that someone who couldn't make
2 the first phase as a public witness could make the
3 second phase.

4 MR. JUDGE MILLER: Yeah, do you want him to
5 add so far?

6 MR. GOLDSTEIN: Yes.

7 MR. JUDGE MILLER: There are two phase so
8 far.

9 MR. GOLDSTEIN: So far, correct.

10 MR. JUDGE MILLER: Well, yes, I think it
11 might be wise to point out that there are presently
12 scheduled two phases of this hearing.

13 Paragraphs 3 through 7 deal with
14 clarification of issues. Paragraph 3 deals with the
15 standard, the integration statements. Both of you have
16 filed those statements.

17 Do you have any questions about those
18 statements, Mr. Carr?

19 MR. CARR: No, your Honor.

20 MR. JUDGE MILLER: Mr. Belisle?

21 MR. BELISLE: No, your Honor.

22 MR. JUDGE MILLER: Mr. Goldstein.

23 MR. GOLDSTEIN: I don't participate in that
24 aspect of it, your Honor.

25 MR. JUDGE MILLER: All right. Well, I have

1 one, I have a question.

2 Let me state, Mr. Carr, that Mr. Taylor's
3 standardized integration statement was apparently
4 submitted before you got into the case.

5 MR. CARR: Yes, your Honor.

6 MR. JUDGE MILLER: Now, with that background,
7 I see in his standardized integration statement he says
8 that he works eight to 25 hours per week on WTRU
9 business matters. The Review Board's precedents will
10 give him credit for eight and he'll get credit for zero
11 per cent under the Commission precedent. I think he
12 ought to be aware of that.

13 MR. CARR: I think the exhibits might clarify
14 that, your Honor.

15 MR. JUDGE MILLER: All right.

16 Paragraph 4 deals with Taylor's claim for
17 renewal expectancy. He claimed a renewal expectancy on
18 June 5th, 1992 and we're going to get to some of the
19 procedural details underlying that claim in a little
20 while.

21 Paragraphs 5 and 6 deal with comparative
22 coverage and I have received a letter and I have also
23 received a copy of the preliminary engineering.

24 Are you prepared to exchange the final
25 engineering today, Mr. Carr?

1 MR. CARR: No, your Honor, unfortunately I
2 did not bring it with me.

3 MR. JUDGE MILLER: Why not?

4 MR. CARR: I was running to get down here,
5 your Honor, and I --

6 MR. GOLDSTEIN: Your Honor, might I state
7 that on the copy dated August 12th, it does state joint
8 engineering exhibit. It may have been inadvertent, but
9 it does state that.

10 MR. JUDGE MILLER: The point is that as far
11 as I'm concerned, there should be an exchange of final
12 engineering today unless there's been a problem arise
13 that we can't take care of.

14 MR. GOLDSTEIN: Yes. May I comment on that,
15 your Honor, please?

16 MR. JUDGE MILLER: Yes.

17 MR. GOLDSTEIN: The Bureau engineer has
18 reviewed it. He has no difficulties with it so
19 therefore, the Bureau doesn't -- and I must also, I'd
20 like also to state, your Honor, that in terms of
21 comparative coverage and so on and so forth, there is
22 no white areas, there's no under-served areas and on
23 Table 2 it indicates that the comparative populations
24 are 203,000 versus 209,000 according to their
25 engineer's analysis.

1 And I would like to suggest to the parties
2 that they strongly consider a stipulation to the effect
3 that no one is going to attempt to claim any
4 comparative advantage based upon the engineering
5 exhibit. This does not preclude the necessity for
6 meeting your order, your Honor, in terms of that.

7 MR. JUDGE MILLER: Okay, with that
8 understanding. In other words, what you're saying to
9 me is that you've looked this over, you don't have any
10 problems with the methodology that's been used.

11 As far as you're concerned, that could become
12 the final exhibit on evidentiary -- at the evidentiary
13 admission session and along with a stipulation entered
14 into on that day, everything will -- that will complete
15 the comparative engineering phase.

16 MR. BELISLE: Your Honor?

17 MR. GOLDSTEIN: With the further
18 understanding, your Honor, that other than saying that
19 there would be no showing beyond that and no claims to
20 the effect that someone as a comparative advantage.

21 JUDGE MILLER: Well, that's the stipulation.

22 MR. GOLDSTEIN: Yes, sir.

23 JUDGE MILLER: That will be the -- Mr.
24 Belisle?

25 MR. BELISLE: Yes. I've received a copy of

1 the preliminary exchange and my understanding is that
2 there aren't any changes from the preliminary exchange.

3 MR. GOLDSTEIN: That's correct.

4 MR. BELISLE: So to the extent that we've all
5 received the preliminary exchange, we really have
6 received a copy of the joint engineering exhibit. I
7 only mention that --

8 JUDGE MILLER: As it turns out.

9 MR. BELISLE: As it turns out. As fate would
10 have it.

11 JUDGE MILLER: You see, that's -- yes.

12 Now, what I want done, Mr. Carr, and I'm
13 addressing you because you seem to be carrying the
14 laboring oar under this, on this thing.

15 MR. CARR: Yes, your Honor.

16 JUDGE MILLER: You have two copies to give to
17 the Reporter at the evidentiary admission session and
18 offer them, identify them and offer them. I'll get
19 everybody's agreement that this is the engineering.

20 I'll accept it into evidence and then we
21 ought to be able to take it to the next step that Mr.
22 Goldstein suggested, that you ought to be able to put a
23 stipulation on the record at the evidentiary admission
24 session saying that nobody is going to be claiming any
25 comparative advantage as a result of that exhibit being

1 received in evidence.

2 And with that, we can wrap that up and then
3 when I reach the initial decision, I can take care of
4 it in one or two sentences.

5 Does that sound like a way to get beyond the
6 comparative engineering?

7 MR. CARR: Yes, your Honor.

8 JUDGE MILLER: All right.

9 Paragraph 7 permits you to raise any
10 questions about clarification of existing issues.

11 Do you have any questions about the existing
12 issues, Mr. Carr?

13 MR. CARR: No, your Honor.

14 JUDGE MILLER: Mr. Belisle?

15 MR. BELISLE: Yes, your Honor, in this
16 respect. An issue regarding the WTRU silence authority
17 is specified for phase two. I take it that regardless
18 of the basic qualifying nature of that issue, there's
19 likely to be testimony that would impact on a renewal
20 expectancy to the extent that being silent might impact
21 on a renewal expectancy and I was wondering if all the
22 examination on the question of the station's silence
23 would properly be deferred to phase two?

24 JUDGE MILLER: No.

25 MR. BELISLE: No.

1 JUDGE MILLER: I don't mind -- it's the same,
2 basically the same concept as evidence that is
3 admissible under the standard comparative issue, to
4 show a sham application, et cetera, and a basic
5 qualifying issue.

6 There's some financial evidence that's
7 relevant to the standard comparative issue and a
8 financial issue that's in the case. But we're not
9 going to skewer phase one. There's a renewal
10 expectancy on the line that's part of phase one and
11 we're going to go through phase one.

12 Now, to the extent that somebody doesn't want
13 to add any evidence on cross examination in phase one,
14 if you have a document you decided you'd just as soon
15 wait till phase two, that's your election. Now, if you
16 want to use it in phase one and also use it again in
17 phase two, you can.

18 MR. BELISLE: But as I plan for phase one, I
19 should keep in mind that all evidence on the renewal
20 expectancy must come in in phase one?

21 JUDGE MILLER: That's correct.

22 MR. BELISLE: Okay, that's fine.

23 MR. GOLDSTEIN: Could I ask a further
24 clarification on that, your Honor?

25 JUDGE MILLER: Yes.

1 MR. GOLDSTEIN: On July 10th you added some
2 further issues and in some cases, you indicated that
3 some matters would be dealt with under the renewal
4 expectancy.

5 JUDGE MILLER: That's right and I expect it
6 to be dealt with under the renewal expectancy.

7 MR. GOLDSTEIN: So those issues that were
8 added in that order, in that discussion, would be
9 encompassed within phase one? Is that --

10 JUDGE MILLER: Well, if I did not add an
11 issue, but said that the subject matter could be
12 covered under the renewal expectancy copy, that should
13 be done in phase one. Okay?

14 MR. BELISLE: Yes, thank you, your Honor. It
15 straightens it out in my mind.

16 JUDGE MILLER: Okay. Let's -- as Mr.
17 Goldstein has pointed out, there's two kinds of
18 problems from your point of view and Mr. Carr's point of
19 view. You've got those subject matter in which I added
20 issues, which also would bear on renewal expectancy,
21 and you've got subject matter where I didn't add issues
22 and would bear on renewal expectancy.

23 The second type of problem should be brought
24 out in phase one and only in phase one. The first one
25 can be brought out in both places, but that's the

1 election of the parties.

2 Any problems, Mr. Carr?

3 MR. CARR: I'm trying to see if I can
4 decipher what you said, your Honor. On those matters
5 on which issues were not added which bear on renewal
6 expectancy, those can be probed in both phase one and
7 phase two?

8 I mean are we going to repeat the questioning
9 about the same area in both phase one and phase two?

10 JUDGE MILLER: Well, no, but you can use the
11 same documents, you can -- I mean if you've got a
12 record in phase one, you don't need to repeat the
13 record in phase two.

14 MR. CARR: All right.

15 JUDGE MILLER: Anything further? Do you have
16 any clarification questions you wish to raise, Mr.
17 Goldstein?

18 MR. GOLDSTEIN: I attempted to do so, your
19 Honor.

20 JUDGE MILLER: Well, you evidently didn't --
21 I heard the word attempt, so what's your problem?

22 MR. GOLDSTEIN: Well, not having seen the
23 exhibits that are going to be exchanged, it's difficult
24 for me to comment.

25 JUDGE MILLER: That's very good, too. Once

1 you get those and you'll see them, that is you'll see
2 them and you probably would have some concept of what's
3 missing if something is missing and you also have to
4 keep in mind that maybe some exhibits will be
5 exchanged, some exhibits will be exchanged and some
6 will not, because they're not really direct case
7 exhibits, they're cross examination exhibits.

8 MR. GOLDSTEIN: Correct.

9 JUDGE MILLER: So you've got, you've got a
10 certain amount of flexibility on the use of documents.

11 MR. GOLDSTEIN: Right. I understand your
12 marching orders. It's just sort of hard to see how
13 it's going to come into play.

14 JUDGE MILLER: Well, you have to draw the
15 line somewhere. I didn't ask for a phase two, but it
16 has to be.

17 MR. GOLDSTEIN: Correct.

18 JUDGE MILLER: And as far as I'm concerned,
19 we're going to try phase one, get it out of the road
20 totally and then we're going to move to phase two.

21 All right. Paragraph 8 deals with
22 amendments. From an amendment standpoint, is your
23 application up to date and ready to go, Mr. Carr?

24 MR. CARR: Yes, your Honor.

25 JUDGE MILLER: Mr. Belisle?

1 MR. BELISLE: Yes, your Honor.

2 JUDGE MILLER: Paragraphs 9 through 11 deal
3 with discovery, phase one discovery. I repeat, phase
4 one discovery was to have been completed by yesterday,
5 August 24th, 1992.

6 Have you completed your phase one discovery,
7 Mr. Carr?

8 MR. CARR: Yes, your Honor, with the
9 exception that there may still be documents that I may
10 be producing.

11 JUDGE MILLER: Why haven't we done it?

12 MR. CARR: Some of them are recently obtained
13 documents, your Honor. I view the document production
14 as a continuing request and as we are able to --

15 JUDGE MILLER: I understand that, but you
16 view the document production as continuing, but do you
17 also view August 24th as the date for the end of the
18 phase one discovery? That's what we're asking about
19 here.

20 MR. CARR: Yes. I view it as the end of the
21 phase one discovery, but I did not view it as the end
22 of a continuing obligation to produce documents that
23 might be obtained, your Honor. That's all I'm saying.

24 JUDGE MILLER: All right.

25 Mr. Belisle?

1 MR. BELISLE: Well, along those lines, your
2 Honor, I am awaiting some documents and if I could say,
3 I'm not awaiting documents because of any lack of
4 cooperation by counsel for Mr. Taylor, but I have had
5 difficulty in getting the full cooperation of Mr.
6 Taylor himself in producing a copy of his public file.

7 When we took the deposition of Mr. Garza,
8 it --

9 JUDGE MILLER: Do you have a petition to
10 enlarge outstanding on that problem?

11 MR. BELISLE: No. No, your Honor, I do not.
12 I do not have a petition to enlarge issues out on the
13 basis of failure to produce documents.

14 JUDGE MILLER: No, no, public file.

15 MR. BELISLE: We have an issue on public
16 file, your Honor, an issue as to whether Mr. Taylor
17 kept a public file, whether he made --

18 JUDGE MILLER: So that would be a phase two.

19 MR. BELISLE: Yes, yes, it is --

20 JUDGE MILLER: And if it's phase two, do you
21 need these documents -- are these the documents you're
22 waiting for on August 24th, the end of phase one
23 discovery?

24 MR. BELISLE: Yes, your Honor. It's just
25 that the contents of a public file, particularly issues

1 programs lists, do bear on renewal expectancy and
2 they --

3 JUDGE MILLER: Are you satisfied that the man
4 had a public file?

5 MR. GOLDSTEIN: Your Honor, my response to
6 that would be I'm anxiously awaiting exhibits. Based
7 upon what I know, from what has been said in oral
8 deposition, there's a statement there that there was
9 some sort of a public file.

10 There's a question of where it was maintained
11 and how it was maintained and there was some testimony
12 as to what was supposedly in it, but beyond that, I
13 await --

14 MR. BELISLE: But --

15 JUDGE MILLER: Well, but the point I'm
16 making, the point I'm making, Mr. Goldstein, is there's
17 a public file issue in the case --

18 MR. GOLDSTEIN: Yes.

19 JUDGE MILLER: -- and it's in phase two.
20 There's going to be documents produced. Now, Mr.
21 Belisle keeps saying to me well, there are things in
22 that public file that bear on phase one, namely the
23 programming list, et cetera.

24 Now, I haven't read all of these petitions to
25 enlarge yet that have been filed, but I did read

1 something where there was an argument whether he
2 actually had a public file or not and whether there
3 were any -- maybe it was one of his own statements
4 where he said well, you know, I wasn't aware that these
5 things had to be in there.

6 MR. BELISLE: Your Honor, if I might just
7 make a further statement.

8 JUDGE MILLER: Well, let me say this. As far
9 as I'm concerned, you get what documents you need, that
10 you believe are part of phase one, get them to Mr.
11 Belisle as soon as possible and, Mr. Belisle, you take
12 a look at them. But as far as I'm concerned, phase one
13 ended -- discovery ended yesterday.

14 MR. BELISLE: On further reflection, I'd just
15 like to --

16 JUDGE MILLER: I'm not putting up with it.

17 MR. BELISLE: If I could correct something
18 that I stated, your Honor, on further reflection my
19 recollection is that Mr. Garza was talking about
20 materials that went into the public file after the
21 renewal date.

22 MR. CARR: Yes, that's right, that's the
23 correction I was going to make.

24 MR. BELISLE: And I misspoke when I said that
25 it would bear on renewal expectancy because on further

1 reflection, I know that it can't bear on his renewal
2 expectancy if it went in after 1991.

3 JUDGE MILLER: Well, let me ask you this
4 question straight out.

5 MR. BELISLE: Yes.

6 JUDGE MILLER: Have you completed your phrase
7 one discovery?

8 MR. BELISLE: Yes, your Honor, to the -

9 MR. GOLDSTEIN: May I just make one comment,
10 your Honor?

11 My notes indicate that there's a deposition
12 yet to be taken on September 18th that I believe
13 impacts on phase one and that's --

14 JUDGE MILLER: Well, Mr. Bayes?

15 MR. GOLDSTEIN: Yes, sir.

16 JUDGE MILLER: I'm not so sure. I first
17 referred to Mr. Bayes in the enlargement. I was aware
18 of Mr. Bayes' prior role. In fact, I think it should
19 be noted for the record that when I put a prehearing
20 order out, I took the liberty of calling Mr. Bayes,
21 even though I suspected that he was not Mr. Taylor's
22 attorney, but he had been on the case sporadically in
23 the past.

24 And I called him and I told him. I said I'd
25 just like to tell you that I put out a prehearing order

1 and he, at that time, said to me I'm not his lawyer.
2 And I said I'm aware of that, but I'm telling you just
3 as a matter of information.

4 MR. GOLDSTEIN: The reason I cite that
5 though, your Honor, in terms of phase one discovery is
6 I believe his deposition was going to encompass aspects
7 of the silence authority which earlier this morning you
8 ruled would be encompassed within phase one. That's
9 why I mentioned it, your Honor.

10 JUDGE MILLER: Well, Mr. Belisle said the
11 silence authority has relevance. I didn't rule one way
12 or the other, but I'm perfectly willing to rule that it
13 can be considered relevant under phase one, but that
14 doesn't mean that you have to go into James Bayes
15 testimony as a result.

16 I'm aware and I think we're all aware that
17 when you claim a renewal expectancy, you open up broad
18 doors that encompass a lot of different problems, but
19 that doesn't mean that we're not going to get it done
20 in phase one.

21 Well, at this juncture, let me put a progress
22 report on the record because I think that's important
23 in connection with something that Mr. Goldstein said
24 earlier.

25 There are three interlocutories outstanding

1 that I have not yet ruled on. There is Jupiter's
2 second petition to enlarge against Robert Taylor. That
3 was filed on the 24th of July. Taylor opposed it on
4 the 12th. The Bureau commented on the 12th and a reply
5 was due yesterday and Mr. Belisle so filed a reply
6 yesterday, so it just became ripe for a ruling.

7 Now, that particular interloc I had hoped I
8 would be able to amalgamate into phase two, but that
9 one -- I issued that hope at a time when I didn't know
10 there were two more coming, because I also have
11 awaiting ruling, JBC's third petition to enlarge
12 against Taylor and that was filed on August 12th.
13 Oppositions and comments are due on the 26th, that's
14 tomorrow.

15 MR. CARR: Tomorrow.

16 JUDGE MILLER: And the reply is due September
17 8th, so that's not yet ripe for a ruling.

18 I also have Taylor's first motion to enlarge
19 against Jupiter. Oppositions and comments are due on
20 that on 8/26, tomorrow. The reply is due on September
21 8th, so that is not yet ripe for hearing.

22 So we may need a phase three if I have to add
23 issues. And in that connection, let me make two
24 observations.

25 The hearing designation order was printed in

1 the Federal Register on May 27th, 1992 and that
2 citation is 52 Federal Register 22239 and 47 CFR 1.229A
3 requires motions to enlarge to be filed within 15 days
4 after publication in the Federal Register.

5 Now, Mr. Carr, you were with me in
6 Appomattox.

7 MR. CARR: Yes, your Honor.

8 JUDGE MILLER: And, Mr. Belisle, you were
9 with me in Mableton.

10 MR. BELISLE: Yes, your Honor.

11 JUDGE MILLER: So you know that I am one
12 Judge who abides by that Federal Register requirement.

13 So if you have filed outside the 15 day
14 limit, you better have either explained yourself or
15 pleaded up for a powerful set of allegations.

16 All right, any questions about what I just
17 said, Mr. Carr?

18 MR. CARR: No, your Honor.

19 JUDGE MILLER: Mr. Belisle?

20 MR. BELISLE: No, your Honor, but there is a
21 matter I would like to raise, since we are talking
22 about the interlocutory pleadings.

23 It's the matter of the due date of my
24 opposition to Mr. Carr's pleading tomorrow. I had
25 hoped to finish the pleading yesterday. Unfortunately,

1 I was not able to go into the office yesterday and I
2 may not be able to go into the office until much later
3 in this week.

4 I was wondering if it might be possible, due
5 to the fact that we've been having some troubles down
6 in Miami, to have some additional time. I'd hope for
7 an additional week to respond to Mr. Carr's pleading.
8 I do have most of my opposition with me, but
9 unfortunately, it's not in the shape to be filed.

10 JUDGE MILLER: Let me put it this way. Are
11 you filing an oral motion with me for an extension of
12 time until when?

13 MR. BELISLE: A week from tomorrow.

14 JUDGE MILLER: 9/3? Well, 31 days, 9/2.

15 MR. BELISLE: If that's a week from tomorrow,
16 yes, your Honor.

17 JUDGE MILLER: Well, let's -- tell me what
18 you want.

19 MR. BELISLE: Yes, a seven day extension.

20 JUDGE MILLER: A seven day extension and --
21 from the 26th, 27th, 28th, 29th, 30th, 31st, September
22 1, September 2.

23 MR. BELISLE: Yes, to September 2, yes, your
24 Honor.

25 JUDGE MILLER: Now, does that follow Labor